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United States/Core Reservations to Forced Disappearances draft instrument

The United States has core reservations to the forced disappearances treaty text including the following Articles. We note below the proposed text of the United States for such articles or sub-articles.

UNITED STATES TEXT follows.

1) RIGHT TO THE TRUTH - Preamble paragraph 7:

"Affirming the right of any person not to be subject to an enforced disappearance, the right of victims to justice and to reparation, and their freedom to seek, receive and impart information about the circumstances of an enforced disappearance and the fate of the disappeared person,"

Article 24(2)

"Each victim has the freedom to seek, receive, and impart information regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard."

2) DEFINITION - Article 2

"For the purposes of this instrument, enforced disappearance is considered to be the arrest, detention, or abduction of a person by or with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, with the intention of removing that person from the protection of the law for a prolonged period of time."

3) CRIMINALIZATION - Article 4

"Each State Party shall take the necessary measures to ensure that an enforced disappearance is fully covered under its criminal or penal law."

4) CRIME AGAINST HUMANITY - Article 5

Delete provision in its entirety

5) LACK OF DEFENSE OF SUPERIOR ORDERS - Article 6(2)

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"No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance if the accused knew that the order was unlawful or a person of ordinary sense and understanding would have known the order to be unlawful."

6) Statute of Limitations – Article 8

"A State Party which applies a statute of limitation in respect of an enforced disappearance shall take the necessary measures to ensure that the term of limitation is proportionate to the extreme seriousness of the offence."

7) "FOUND IN" JURISDICTION - - Article 9(2)

DELETE Article 9(2) in its entirety

8) NON-REFOULEMENT - Article 16(2) & (3)

2. "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights"

3. "The benefit of the present provision may not, however, be claimed by a person whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. "

9) ACCESS TO PLACES OF DETENTION - Article 17, including 17(2) (e)

The article should be amended to reflect conformance with the constitutional and other law of a state party, such as article 17(2)(e), as follows; "guarantee access by the competent authorities and legally authorized institutions to the places where persons are deprived of liberty, if necessary with the prior authorization of a judicial authority ;"

10) TREATY MONITORY BODY - Article 26 – The United States firmly supports use of an existing treaty body, the Human Rights Committee.

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